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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/543,194	07/21/2005	Edward T Mol	71358-0082	5566
20915	7590	08/01/2007		
MCGARRY BAIR PC			EXAMINER	
32 Market Ave. SW			PIZIALI, ANDREW T	
SUITE 500				
GRAND RAPIDS, MI 49503			ART UNIT	PAPER NUMBER
			1771	
			MAIL DATE	DELIVERY MODE
			08/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/543,194	MOL, EDWARD T
	<b>Examiner</b>	<b>Art Unit</b>
	Andrew T. Piziali	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 May 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) 5 and 9-20 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4 and 6-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 21 July 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892).	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>7/21/2005</u> .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-4 and 6-8, in the reply filed on 5/22/2007, is acknowledged. The traversal is on the grounds that USPN 6,328,077, and the references cited on the International Search report, fail to teach or suggest the special technical feature. This is not found persuasive because the below rejections demonstrate that the elected claims do not avoid the prior art, therefore, the special technical feature of the application is anticipated by or obvious in view of the prior art. Consequently, the inventions listed as Groups I, II, and III do not relate to a single general inventive concept under PCT Rule 13.1.

The requirement is still deemed proper and is therefore made FINAL.

### ***Specification***

2. The disclosure is objected to because of the following: page 2 does not belong.  
Appropriate correction is required.

### ***Claim Objections***

3. Claim 1 is objected to because of the following informality: The word "layer" should follow "upper" in line 2. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3, 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,328,077 to Mol in view of USPN 3,872,895 to Takada.

Regarding claims 1, 3, 4 and 8, Mol discloses a belting fabric comprising a plurality of adjacently disposed couplets of weft yarns forming an upper layer of weft yarns and a lower layer of weft yarns, a plurality of binder warp yarns, each binder warp yarn extending over at least one of the couplets of weft yarns in the upper layer and under at least two of said adjacently disposed couplets of weft yarns in the lower layer, and a straight middle warp yarn between the upper layer and the lower layers (see entire document).

Mol discloses that the middle warp yarn may be a "standard light denier yarn" but Mol does not appear to mention specific yarns. Mol is silent with regards to specific middle yarn materials, therefore, it would have been necessary and thus obvious to look to the prior art for conventional middle yarn materials. Takada provides this conventional teaching showing that it is known in the art to use inelastic core polyester yarns of low elongation to bear loads under tension without twisting or stretching (see entire document including column 4, lines 48-62 and column 5, lines 22-31). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the middle yarn from polyester yarns of low elongation, motivated by the expectation of successfully practicing the invention of Mol.

The substitution of known equivalent structures involves only ordinary skill in the art. *In re Fout* 213 USPQ 532 (CCPA 1982); *In re Susi* 169 USPQ 423 (CCPA 1971); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *In re Ruff* 118 USPQ 343 (CCPA 1958). When a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result. **KSR**

#### v. Teleflex

Regarding claim 3, Takada discloses that the middle yarns may have a denier of at least 550 (column 5, lines 43-56).

Regarding claims 4 and 8, Takada discloses that the middle yarns may be set under tension (column 5, lines 22-31). Although Takada does not appear to mention heat, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter.

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6. Claims 2, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,328,077 to Mol in view of USPN 3,872,895 to Takada as applied to claims 1, 3, 4 and 8 above, and further in view of anyone of USPN 3,650,879 to Munting or USPN 4,975,326 to Buyalos.

Regarding claims 2, 6 and 7, Takada discloses that it is known in the art to use inelastic middle polyester yarns of low elongation to bear loads under tension without twisting or stretching (see entire document including column 4, lines 48-62 and column 5, lines 22-31), but Takada does not appear to mention specific polyesters. Munting and Buyalos each disclose that it is known in the conveyor belt art to use PET fibers (see entire documents including column 1, lines 1-49 of Munting and column 1, lines 14-18 and column 2, lines 20-53 of Buyalos). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the polyester yarns from any suitable polyester material, such as PET, because PET has a low elongation at break and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claim 6, Takada discloses that the middle yarns may have a denier of at least 550 (column 5, lines 43-56).

Regarding claim 7, Takada discloses that the middle yarns may be set under tension (column 5, lines 22-31).

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7. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,328,077 to Mol in view of USPN 5,376,440 to Koseki.

Regarding claims 1 and 3, Mol discloses a belting fabric comprising a plurality of adjacently disposed couplets of weft yarns forming an upper layer of weft yarns and a lower layer of weft yarns, a plurality of binder warp yarns, each binder warp yarn extending over at least one of the couplets of weft yarns in the upper layer and under at least two of said adjacently disposed couplets of weft yarns in the lower layer, and a straight middle warp yarn between the upper layer and the lower layers (see entire document).

Mol discloses that the middle warp yarn may be a "standard light denier yarn" but Mol does not appear to mention specific yarns. Mol is silent with regards to specific middle yarn materials, therefore, it would have been necessary and thus obvious to look to the prior art for conventional middle yarn materials. Koseki provides this conventional teaching showing that it is known in the art to use inelastic core polyester yarns of low elongation to bear loads under tension without twisting or stretching (see entire document including column 3, lines 10-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the middle yarn from polyester yarns of low elongation, motivated by the expectation of successfully practicing the invention of Mol.

Regarding claim 3, Koseki discloses that the middle yarns may have a denier of at least 550 (column 3, lines 40-49).

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8. Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,328,077 to Mol in view of USPN 5,376,440 to Koseki as applied to claims 1 and 3 above, and further in view of anyone of USPN 3,650,879 to Munting or USPN 4,975,326 to Buyalos.

Regarding claims 2 and 6, Koseki discloses that it is known in the art to use inelastic middle polyester yarns of low elongation to bear loads under tension without twisting or stretching (see entire document including column 3, lines 10-49), but Koseki does not appear to mention specific polyesters. Munting and Buyalos each disclose that it is known in the conveyor belt art to use PET fibers (see entire documents including column 1, lines 1-49 of Munting and column 1, lines 14-18 and column 2, lines 20-53 of Buyalos). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the polyester yarns from any suitable polyester material, such as PET, because PET has a low elongation at break and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claim 6, Koseki discloses that the middle yarns may have a denier of at least 550 (column 3, lines 40-49).

9. Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,328,077 to Mol in view of USPN 5,376,440 to Koseki as applied to claims 1 and 3 above, and further in view of USPN 3,872,895 to Takada.

Mol does not appear to mention tensioning the middle yarns, but Takada discloses that it is known in the art to tension the middle yarn of a belt (column 5, lines 22-31). It would have been obvious to one having ordinary skill in the art at the time the invention was made to tension the middle yarn, motivated by a desire to increase the tension response of the belt.

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10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,328,077 to Mol in view of USPN 5,376,440 to Koseki in view of anyone of USPN 3,650,879 to Munting or USPN 4,975,326 to Buyalos as applied to claims 2 and 6 above, and further in view of USPN 3,872,895 to Takada.

Mol does not appear to mention tensioning the middle yarns, but Takada discloses that it is known in the art to tension the middle yarn of a belt (column 5, lines 22-31). It would have been obvious to one having ordinary skill in the art at the time the invention was made to tension the middle yarn, motivated by a desire to increase the tension response of the belt.

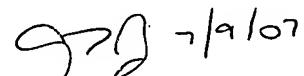
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



ANDREW PIZIALI  
PRIMARY EXAMINER

atp